

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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PLR-106731-11

Date:

July 27, 2011

TY:

LEGEND:

Acquiring =

Target 1 =

Target 2 =

Target 3 =

Target 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated February 8, 2011, requesting, on behalf of Acquiring, an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Acquiring to file an election under § 1.1502-21(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses ("CNOLs") attributable to Targets 1 through 4, the portion of the carryback period for which Targets 1 through 4 were members of another group (the "Election"). Additional information was submitted in letters dated April 20, May 9, May 20, and June 17, 2011. The material information submitted for consideration is summarized below.

At all times from Date 1 to Date 2, Target 1 was the common parent of a group of affiliated corporations filing a consolidated Federal income tax return ("Target Group"). Target 1 owned 100% of the stock of Target 2. Target 2 owned 100% of the stock of Target 3 and 100% of the stock of Target 4. On Date 2, Acquiring purchased 100% of the stock of Target 1.

For the taxable year ending Date 3, Acquiring and its includible subsidiaries ("Acquiring Group") timely filed a consolidated Federal income tax return. Targets 1 through 4, and various other subsidiaries that are not relevant here, were included in Acquiring Group's consolidated return for the portion of the taxable year that they were members of the group.

The Election was due on Date 4, but for various reasons a valid election was not filed. After the due date for the Election, it was discovered that the Election had not been filed. Subsequently, this request was submitted under § 301.9100-3 for an extension of time to file the Election. The period of limitations on assessment under § 6501(a) has not expired for Acquiring Group's taxable years in which the Election should have been filed or any subsequent taxable years.

Target 1 has represented that the Target Group has not and will not include on its Federal consolidated income tax returns for any tax years ended on or before Date 2 a carryback of any net operating losses generated after Date 2 by Targets 1 through 4.

Section 1.1502-21(b)(3)(ii)(B) provides that if one or more members of a consolidated group become members of another consolidated group, the acquiring consolidated group may elect to relinquish, with respect to all CNOLs attributable to the member, the

portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under § 172.

The election is made in a separate statement entitled “THIS IS AN ELECTION UNDER SECTION 1.1502-21(b)(3)(ii)(B) TO WAIVE THE PRE-[insert first taxable year for which the member (or members) was not a member of the group] CARRYBACK PERIOD FOR THE CNOLs attributable to [insert names and employer identification number of members].” Section 1.1502-21(b)(3)(ii)(B) provides that the statement must be filed with the acquiring consolidated group’s original income tax return for the year the corporation (or corporations) became a member.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making certain elections that do not meet the requirements of § 301.9100-2. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-21(b)(3)(ii)(B)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Acquiring to file the Election, provided Acquiring acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Acquiring, Company Official, and Tax Professional, explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Acquiring reasonably relied upon a qualified tax professional who failed to make, or advise Acquiring to make, the Election, and the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§ 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Acquiring has established that it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under § 301.9100-3, until 45 days from the date on this letter, for Acquiring to file the Election.

Acquiring should file the Election by filing the statement described in § 1.1502-21(b)(3)(ii)(B).

The above extension of time is conditioned on Acquiring Group's and Target Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the Federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)